

Key Concepts of Therapeutic Jurisprudence

And other restorative justice practices

Whether we realise it or not, everything that happens within the justice system impacts on the well-being of those who enter its orbit. No one is immune. Sometimes the law makes things better, and sometimes it makes things worse.

What, for example, are the chances of a young man managing his mental illness while in jail, if a magistrate fails to consider that the boy hasn't the means to manage his medical regime by himself?

What is the defendant (who has spent four hours in the court waiting area) to think when she comes before a judge who doesn't bother to pronounce her name correctly?

Conversely, what are the benefits of having volunteers on hand to provide comfort and support to people waiting to go into court? Or a court that provides tea and coffee, a children's playroom and counselling?

How likely is an offender to successfully complete a Community Correction Order if the court ignores the offender's turbulent home life?

How does a lengthy, intimidating cross-examination traumatise a victim?

Therapeutic Jurisprudence (TJ)

TJ is fundamental to a problem-solving approach to justice. It suggests all court processes should take into account the potential impact of the legal system (its procedures and rules) on the emotional and psychological well-being of participants. It recognises that the law can have beneficial or harmful effects on a person's well-being. TJ is about humanising the justice system.

None of this is to say that the justice system should stop handing down appropriate sentences. It simply acknowledges that those working in the justice system must weigh up therapeutic approaches alongside other important values such as the weight of deterrence.

At a practical level, TJ is why an offender at the NJC may be directed to undertake drug rehabilitation programs and given mental health counselling – to get their life on track – before they are sentenced to (for example) a Community Correction Order. It's why the NJC Magistrate speaks in Plain English and actively ensures that everyone in the courtroom understands what's happening.

Indeed, the use of a therapeutic approach is specified in NJC's own legislation¹. The stated objectives are: "simplifying access to the justice system and applying therapeutic and restorative approaches in the administration of justice."

The legislation also specifies that the process of selection of a magistrate for the NJC "must have regard to the magistrate's knowledge of, or experience in the application of, the principles of therapeutic jurisprudence and restorative justice". TJ is a major consideration in the sentencing process at the NJC and underpins the philosophical approach of the whole Centre.

A neat way to understand Therapeutic Jurisprudence is to remember that 'therapeutic' means a treatment that heals, cures or remedies a disorder (emotional or psychological) and 'jurisprudence' is the study or philosophy of law.

Law that heals.

[See resource 3.3 for an example of therapeutic jurisprudence in action]

¹ Courts Legislation (Neighbourhood Justice Centre) Act 2006

Restorative Justice (RJ) is a theory of justice that emphasises addressing and repairing the harm caused by criminal behaviour or an incident. It is best accomplished through cooperative processes that involve all people affected by the behaviour or incident. This can lead to transformation of people, relationships and communities.

Restorative Justice:

- Aims to restore victims' wellbeing and to make offenders aware of the impact of their actions on others. RJ also offers offenders the opportunity to repair the harm caused and to prevent further offending.
- Is practised in the Australian criminal justice system most commonly through programs such as victim-offender mediation, conferencing (for both adult and young offenders) and circle sentencing. Internationally it is also used in child welfare settings.

- RJ practices generally provide a process so that parties affected by harmful behaviour can work together to reach a common understanding of what has happened, to determine collectively how best to deal with the aftermath of the incident(s) and, where possible, to transform conflict into cooperation.
- The NJC encourages the active participation of victims, offenders, their families, and the community in the justice process.
- RJ is enshrined in the NJC's legislation; section 5(a) of the Courts Legislation (Neighbourhood Justice Centre) Act 2006 provides that: "In assigning a magistrate to the Neighbourhood Justice Division, the Chief Magistrate must have regard to the magistrate's knowledge of, or experience in the application of, the principles of therapeutic jurisprudence and restorative justice".

Problem-solving and problem-oriented approaches to justice "... have been developed over the last decade to address the underlying causes of crime and to find solutions to the complex problems facing offenders, victims and the community... These approaches aim to stop, or at least slow, the 'revolving door' where some offenders move in and out of the criminal justice system." (Victorian Auditor General's Report, 2011).

These approaches:

- Have greater concern for responding to the underlying causes of crime, reducing recidivism, preventing re-victimisation and improving confidence in justice.
- Involve collaboration between justice and social services agencies to link offenders and victims to appropriate, local treatment and services.

- Use data analysis and evidence-based risk and needs assessment tools to tailor responses to individuals' problems.
- Treat offenders as individuals rather than employing a 'one-size-fits-all' approach.
- Recognise that offenders often lead complex lives and use strategies to increase the effectiveness of their engagement with services, such as increased offender accountability with regular monitoring of their progress by the court and placing an emphasis on the continuity of personnel working with the offender.

Problem-Solving Process (PSP) at the NJC is a unique process that helps offenders with complex needs turn their lives around by addressing the underlying causes of their offending.

The Problem-Solving Process:

- Is informed by therapeutic jurisprudence, restorative justice processes and the principle that people are more likely to change their behaviour for the better when people in authority "do things with them, rather than to them, or for them." (Wachtel and McCold, 2004)
- Is an out-of-court process, and brings as many people as required to the table to assist an offender to discuss treatments and support options tailored to help them break the cycle of offending.

- Is strictly voluntary and confidential and the referred person can withdraw at any time.
- Has a participatory nature that means all who take part are expected to contribute meaningfully to the discussion.
- Reports of problem-solving meetings, including agreed outcomes, are given to the court, providing an informed context for the Magistrate's decision-making.
- Any person with a criminal matter listed in the NJC Court is potentially eligible for problem-solving, except in contested criminal matters.